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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/441,683 | 11/16/1999 | JOSEPH B. SLATER | KOS-11702/03 | 4789 |

7590 06/24/2002

JOHN G POSA
GIFFORD KRASS GROH SPRINKLE
PATMORE ANDERSON & CITKOWSKI P C
280 N OLD WOODWARD AVE SUITE 400
BIRMINGHAM, MI 48009

EXAMINER

SMITH, ZANDRA V

ART UNIT

PAPER NUMBER

2877

DATE MAILED: 06/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) |
|------------------------------|-----------------|-------------------|
| | 09/441,683 | SLATER, JOSEPH B. |
| Examiner | Art Unit | |
| Zandra V. Smith | 2877 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on ____.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-7 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1,2 and 4-7 is/are rejected.

7) Claim(s) 3 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 4-7 are rejected under 35 U.S.C. 102(b) as being anticipated by *Kuramoto et al. (5,630,795)*.

As to **claim 1**, Kuramoto discloses a cleaning tube apparatus for endoscopes, comprising:
a probe body (1), with windows (10) having a surface facing a sample (col. 6, lines 20-25 and col. 12, lines 7-35);
a sampling beam (col. 12, lines 7-9) carrying wavelengths through the window for analysis;
a fluid conduit (2, col. 6, lines 20-25 and col. 12, lines 7-35); and
a flooding structure (9, col. 6, line 24 and col. 12, lines 7-35).

As to **claims 4-6**, Kuramoto discloses everything claimed, as applied above, in addition the fluid is a liquid, gas, or solvent (col. 11, lines 35-40).

As to **claim 7**, Kuramoto is silent to the fluid entering the sample after flood, however the endoscope is inserted into the body (col. 1, lines 10-13), therefore the limitation is inherently met.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Kuramoto et al. (5,630,795)* in view of *Alfano et al. (5,261,410)*.

As to **claim 2**, Kuramoto discloses everything claimed, as applied above, with the exception Raman Spectra, however the use of Raman Spectra is well known as taught by Alfano. Alfano discloses an endoscope used to determine if a tissue is malignant that includes the use of Raman Spectra (col. 1, line 10). It would have been obvious to one having ordinary skill in the art at the time of invention to use Raman Spectra because certain body constituents produce distinguishable Raman spectra when illuminated with the proper wavelength.

Allowable Subject Matter

Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record, taken alone or in combination, fails to disclose or render obvious part of the fluid passing through an aperture to ensure that the sample does not reach the window.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kinoshita (4,281,646) discloses a cleaning device or an observation window of an endoscope.

O'Brian et al. (4,836,689) discloses an asymmetric air system for cleaning a lens.

Banks et al. (4,976,871) disclose a system for monitoring flocculant effectiveness that cleans the window of the probe.

Bedingham et al. (5,333,609) disclose a catheter and probe-catheter assembly.

Karasawa et al. (5,575,756) discloses an endoscope apparatus.

Fax/Telephone Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zandra V. Smith whose telephone number is (703) 305-7776. The examiner can normally be reached on 7:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank G. Font can be reached on (703)308-4881. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-0530.


Zandra V. Smith
Patent Examiner
Art Unit 2877

June 19, 2002

Attachment for PTO-948 (Rev. 03/01, or earlier)

6/18/01

The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

1. Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made, other than correction of informalities, unless the examiner has approved the proposed changes.

Timing of Corrections

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.